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August 23, 1996

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VIA FEDERAL EXPRESS

William F. Caton
Acting Secretary,
Federal Communications Commission
1919 M ST NW, Room 222
Washington, DC 20554

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Re: FCC 96-309 In the Matter of Implementation of the Telecommunications Act of 1996;
Accounting Safeguards Under the Telecommunications Act of 1996

Dear Secretary Caton:

Enclosed for filing are an original and six (6) copies of the Initial Comments of the Missouri Public Service Commission in the above captioned proceeding, CC Docket 96-150. One copy has also been sent to the Commission's copy contractor, International Transcription Service, 2100 M ST, NW, Suite 140, Washington, DC 20037. In addition, a copy of the enclosed filing has been submitted, on diskette as well as paper, to Ernestine Creach, Common Carrier Bureau, Accounting and Audits Division, 2000 L ST, NW, Suite 257, Washington, DC 20554.

If you should have any questions regarding the enclosures or other issues with respect to the filing submitted on behalf of the Missouri Public Service Commission, please feel free to contact the undersigned. Thank you.

Sincerely,

Eric Witte by aus

Eric Witte
Attorney for the
Missouri Public Service Commission

6 Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

RECEIVED
JUL 26 1996
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)
)
Implementation of the)
Telecommunications Act of 1996;)
)
Accounting Safeguards Under the)
Telecommunications Act of 1996)

CC Docket No. 96-150

INITIAL COMMENTS OF THE
MISSOURI PUBLIC SERVICE COMMISSION

In a Notice of Proposed Rulemaking (hereinafter "NPRM") released July 18, 1996, the Federal Communications Commission ("the FCC") requested comments on a number of issues regarding the implementation of the accounting safeguards of §§271 and 272 of the Telecommunications Act of 1996 ("the 1996 Act"). The Missouri Public Service Commission submits the following comments:

Summary

The MoPSC disputes the FCC's tentative conclusion that it has jurisdiction to promulgate rules under §§271 and 272 regarding intrastate services. Additionally, the MoPSC urges the FCC to incorporate the recommendations of the two NARUC resolutions regarding: 1) the implementation of §271 of the 1996 Act; and, 2) audit guidelines and analysis.

Argument

Preemption. In the instant proceeding, as it did in the *BOC In-Region NPRM* (CC Docket 96-149), the FCC tentatively concludes that it has jurisdiction over both interstate and intrastate

matters. NPRM at ¶43. Again, as in the prior proceeding, the MoPSC disagrees with this conclusion.

The FCC states that §§271 and 272 of the 1996 Act “were intended to replace the MFJ¹ as to both interstate and intrastate interLATA services and interLATA information services.”² NPRM at ¶ 44. The FCC, therefore, tentatively concludes that its authority under §§271 and 272 “applies to both interstate and intrastate interLATA information services provided by the BOCs or their affiliates.” NPRM at ¶48. Further, the FCC tentatively concludes, based on its analysis in the *BOC In-Region NPRM* (CC Docket 96-149), that since §§271 and 272 were enacted after §152(b) of the Communications Act of 1934, as amended, that Congress intended §§271 and 272 “to take precedence over any contrary implications based on section 2(b).” *Id.*

During the period that the MFJ was in effect, the states retained jurisdiction over intrastate matters. This fact has not changed. While the 1996 Act has replaced the MFJ,³ that fact alone does not bestow additional jurisdiction upon the FCC in the absence of explicit statutory language. To the contrary, §601(c)(1) of the 1996 Act states that “[t]his Act and the amendments made by this Act

¹Commentor’s note: “MFJ” refers to the modified final judgment in United States v. Western Elec. Co., 552 F.Supp. 131 (D.D.C. 1982).

² The NPRM is replete with such conclusions. Additional instances of the FCC’s tentatively concluded authority appear at ¶¶33, 34, 36, 94, 99 and 100.

³The 1996 Act provides at § 601(a):

Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the [MFJ] shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and obligations imposed by the [MFJ].

shall not be construed to modify, impair or supersede Federal, State or local law unless expressly so provided in such Act or amendments.”

Moreover, where Congress removes limiting language from a draft bill prior to enactment, it is presumed that Congress intends for the limitations not to apply.⁴ In both the House and Senate pre-conference versions of the bills which became the 1996 Act, section 152(b) was amended to exempt various sections of Title II, including the sections which correspond to what are now §§251, 252, 271 and 272.⁵ Congress then removed those exemptions before passing the Act.

The states retain jurisdiction over intrastate matters. The MoPSC again emphasizes, as it has emphasized throughout its various comments relating to the implementation of the 1996 Act, that 47 USC §152(b) provides: “[N]othing in this chapter shall be construed to apply or give [the FCC] jurisdiction with respect to [intrastate matters].”

Audit Guidelines. At various places in this notice (Paragraph 11, for example), the Commission requests comments on its proposal to use its current Part 32 and Part 64 accounting procedures, with some modifications, to comply with the requirements of Sections 271 and 272. The MoPSC believes this is a good first step, but during the transition to a competitive telecommunications environment, additional rules and guidelines may be necessary. To the extent that opportunities for cross-subsidization are more prevalent in a fledgling competitive environment, then more stringent rules may be necessary to effect a smooth transition.

⁴Russello v. U.S., 464 U.S. 16, 23-24, 104 S.Ct 296, 301, 78 L.Ed.2d 17 (1989); see also Arizona v. California, 373 U.S. 546, 580-581, 83 S.Ct. 1468, 1487-88, 10 L.Ed.2d 542 (1963).

⁵H.R. 1555 at § 101(e)(1) provided that “[§] 2(b) ... is amended by inserting ‘part II of Title II’ after ‘227, inclusive.’” 141 Cong. Rec. H8425-06, H8431 (August 4, 1995); S. 652 at § 101(c)(2) provided for inserting “part II of Title II” as an exception to § 2(b). 141 Cong. Rec. S8570-01.

The FCC makes the following tentative conclusions:

We tentatively conclude that the independent auditor's report should be filed with the Commission and each relevant State commission and should include a discussion of: (1) the scope of the work conducted, with a description of how the affiliate's or joint venture's books were examined and the extent of the examination; (2) the auditor's conclusion whether examination of the books has revealed compliance or non-compliance with the affiliate transactions rules and any non-discrimination requirements in the Commission rules; (3) any limitations imposed on the auditor in the course of its review by the affiliate or joint venture or other circumstances that might affect the auditor's opinion; and (4) a statement by the auditor that the carrier's cost allocation methodologies conform to the Communications Act of 1934, as amended, and the Commission's rules and that the carrier has accurately applied the methodologies described in those rules. We seek comment on the necessity or desirability of using such an approach to satisfy the requirements of Section 272(d). We also seek comment on whether the independent auditor's report should address whether the carrier has complied with Sections 272(e)(3) and 272(e)(4).

NPRM at ¶93. The MoPSC supports this conclusion.

The MoPSC has worked with other states in the NARUC to develop recommended audit procedures and guidelines which will comply with the requirements of Sections 271 and 272. These guidelines are embodied in two resolutions, with attachments, which were adopted by the Executive Committee of NARUC at its Summer committee meetings in late July, 1996. The MoPSC also recommends that the FCC adopt the recommendations made in NARUC's "Resolution to Endorse Coordinated Implementation of Section 271 Responsibilities of the Telecommunications Act of 1996 Among the FCC, DOJ and the States"(Attachment 1), and the "Resolution to Support the Attached Audit Guidelines and Analysis to Comply with the Current Federal Legislation to Prevent Cross Subsidization," (Attachment 2). Additionally, the independent auditor performing the joint audit should be required to incorporate the audit guidelines referred to in the latter resolution. The

independent auditor's report should address whether the carriers have complied with the requirements of Sections 272(e)(3) and 272(e)(4).

The MoPSC appreciates the opportunity to comment upon these very important issues.

Respectfully submitted,

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**Resolution to Endorse Coordinated Implementation of
Section 271 Responsibilities of the Telecommunications Act of 1996
Among the FCC, DOJ and the States**

WHEREAS, State regulatory commissions, the Federal Communications Commission (FCC) and the Department of Justice (DOJ) are vested with the responsibility to effectuate the provisions of Section 271 of the Telecommunications Act of 1996 (the Act), which prescribes a 90 day time frame for disposition of applications of Regional Bell Operating Companies (RBOCs) to enter the in-region interLATA market; and

WHEREAS, Although the Act gives a role to state regulatory commissions under Section 271 of the Act, the Act is silent on the significance that will be attributed to the findings and recommendations of state commissions; and

WHEREAS, Many states have begun to investigate and research how to best implement their consultative responsibilities provided for in Section 271; and

WHEREAS, The Staffs of the state regulatory commissions, the FCC and the DOJ have been cooperating on a national level, to efficiently and effectively coordinate their Section 271 responsibilities, via regular meetings and discussions, during which the states have been urged to undertake comprehensive factual review and analysis in fulfilling their consultative responsibilities; and

WHEREAS, The ongoing dialogue among the staffs of the states, FCC and DOJ has yielded a consensus recognition that proactive measures prior to and in anticipation of the filing of applications may be a constructive and efficient approach for undertaking the respective evaluations required under Section 271; and

WHEREAS, Such measures may include the development of a suggested but not binding procedural framework for the states' use in fulfilling their consultative responsibilities comprised of the initiation of a request to each RBOC to provide notice at least 60 days in advance of its anticipated filing of a Section 271 application with the FCC, and state fact-finding proceedings in advance of the filing of RBOC applications to evaluate compliance with the Section 271 competitive checklist; and

WHEREAS, The Staffs of the states, FCC and DOJ have discussed the importance of the state consultative role, the need for company cooperation and a suggested procedural framework for the RBOCs and states to use; now, therefore, be it

RESOLVED, The National Association of Regulatory Utility Commissioners (NARUC), convened at its 1996 Summer Meeting in Los Angeles, California, endorses the continued dialogue among the Staffs of the states, FCC and DOJ to coordinate the efficient and effective implementation of Section 271 responsibilities; and be it further

RESOLVED, NARUC endorses mechanisms which convey the importance of the states' consultative role, encourages company cooperation and transmits the suggested procedural framework for the RBOCs' and states' use; and be it further

RESOLVED, that in the interest of cooperative federalism and upon the State Commission's performing its investigation of the requirements of Section 271(c) of the Act, the FCC should give substantial consideration to the State's verifying compliance based on adequate findings of fact and conclusions unless such findings and conclusions are clearly inconsistent with the Act.

**Resolution to Support the Attached Audit Guidelines and
Analysis to Comply with the Current Federal Legislation
to Prevent Cross Subsidization**

WHEREAS, The Federal Communications Commission (FCC) and the National Association of Regulatory Utility Commissioners (NARUC) have participated in successful joint audits; and

WHEREAS, The FCC and State staffs have benefited from the joint audits and developed professional expertise that has been shared among the regulatory staff nationally, and high quality guidelines for past audits have been developed; and

WHEREAS, The "Telecommunications Act of 1996" (this Act) will require new audit guidelines and a joint audit approach to the implementation of this Act would be an economical and efficient means to achieve the intent of this Act; and

WHEREAS, This Act requires that the Bell Operating Companies pay for biennial joint Federal/State audits by independent auditors to ensure that the companies meet the separate affiliate requirements of Section 272 and that those audits be made available to the FCC and appropriate state commissions; and

WHEREAS, The Executive Committee of NARUC, convened at its 1996 Winter Meeting in Washington, D.C., authorized the Subcommittees on Communications and Accounts to perform or cause to perform, joint audits with the FCC in a comprehensive manner in the areas of cost of current regulated services, the cost of spare capacity and the transfer of resources to the new non-regulated services and also work cooperatively to ensure that the audits are performed in compliance with Section 272 of the Act; and

WHEREAS, On February 28, 1996, The NARUC Executive Committee adopted a resolution, jointly sponsored by the Committees on Communications and Finance and Technology, which stated that in keeping with the spirit of cooperation set forth in the NARUC Executive Committee Resolutions adopted 2-28-90 and 11-13-91 regarding joint or coordinated FCC and State Audits and the potential benefits derived from such audits, the Subcommittees were directed to invite and work with the FCC staff to prepare uniform joint audit guidelines under the "Telecommunications Act of 1996, to be presented as a proposal to the respective parent committees at the NARUC Summer meetings in Los Angeles, California; and

WHEREAS, The Staff Subcommittees on Communications and Accounts, through the Federal/State RBOC Joint Audit Oversight Committee, have developed audit guidelines; now, therefore be it

RESOLVED, That the National Association of Regulatory Utility Commissioners (NARUC), convened at its 1996 Summer Meeting in Los Angeles, California, adopts the attached audit guidelines and analysis regarding the implementation of Section 272 of the Telecommunications Act of 1996 as prepared by the state members of the Joint Federal/State RBOC Staff Audit Oversight Committee; and, be it further

RESOLVED, That a separate joint federal/state audit team, consisting of staff members from federal and state regulatory commissions, should be set up, consistent with state and federal law, to monitor and oversee the audit processes required by the Telecommunications Act of 1996, especially compliance with Section 272 of the Act.

I. INTRODUCTION

Under a Resolution sponsored jointly by the Committees on Communications and Finance and Technology and adopted on February 28, 1996, the Subcommittee on Communications and the Subcommittee on Accounts were directed to invite and work with the Federal Communications Commission (FCC) and staff to prepare uniform joint audit guidelines under the "Telecommunications Act of 1996." In this document, we are seeking to carry out our directive and clarify and present our interpretation of several points throughout Section 272. Separate Affiliate; Safeguards while attempting to outline the role of the State commissions and the FCC in the audit process. In Section 272(d)(1), it is stated that "a company required to operate a separate affiliate under this section shall obtain and pay for a joint Federal/State audit...". In addition, there are several specific guidelines, requirements and responsibilities included in the Section. Our goal here is to address the most appropriate and efficient execution of those guidelines and responsibilities.

II. FEDERAL AND STATE ROLE

First, we believe a separate joint Federal/State audit team (the Team) should be set up to monitor and oversee the audit process. A team consisting of Federal and State regulators should be formed to oversee and monitor the audit process as it relates to compliance with Section 272. The Team members should be appointed by the NARUC Subcommittee on Communications and the Subcommittee on Accounts. In many instances in the text of Section 272, State and Federal action is mentioned. Where possible, the Team should have the responsibility of completing those actions.

The Team should have access to a staff of auditors who will be assigned to the audits and who will be directly responsible for monitoring the steps in the audit process. The Team audit staff should consist of members of Federal and State regulatory commissions. The State commissions in which a particular company operates would have the first opportunity to volunteer members of their staff to serve on the Team audit staff. All States should have the right to join the team or participate on an individual State basis. An alternative would be to establish a joint board for this purpose.

The Team should not be a party to the contract between the company and the auditor. The Section stated that the audit should be obtained and paid for by the company. Therefore, only the company and the auditor should be party to the contract. However, this does not preclude the team from being involved in determination of the scope of the audit and review of the audit.

Companies should be required to use Requests For Proposals (RFP) to choose auditors to complete the audits required by Section 272. The RFP process will benefit the ratepayers by creating a more competitive decision process while still allowing the companies to choose their own auditors to complete the required audits.

An RFP should include:

- The purpose and the scope of the audit, i.e., to verify compliance with structural and transitional separation requirements as well as anti-discrimination requirements, etc., as required in Section 272;

- A provision for disclosure of the nature and timing of any recent work done for the company or any of its affiliates. Depending upon the type of services performed, the auditor should not be considered for selection in this audit engagement. For example, if the bidder or his/her affiliate was instrumental in designing any of the systems that will be under review in the audit, there may be a conflict of interest in retaining that firm to provide the audit services.
- Auditor selection criteria, with emphasis on the proposed work plan and previous experience of proposed personnel in evaluating affiliate relationships/cost allocations in the telecommunications industry;
- Project controls, including progress reports and a work paper trail with respect to interviews conducted, data collected, auditor analysis, etc.;
- Content of the draft and final reports with requirements for prioritization and quantification of recommendations;
- Provision of company written comments to both the draft and final reports; and
- Provision for protection of proprietary data, by the selected auditor, for which they may have access to during the audit.
- Upon completion of an audit, provision for retention of all workpapers on company premises or guaranteed access to workpapers if they remain in the auditor's custody.

The Team should become involved in the audit process before the auditor is chosen. The Team should develop a set of standards or objectives which must be met in all audits. These audit standards or objectives should be developed to compliment those that may be established by the FCC. In turn, these standards and objectives should be incorporated into the RFP. We recommend that the Team become involved at this level so that when an auditor is chosen, that auditor is very much aware of the responsibilities involved in completing the audit. Knowing what is expected from all involved will help facilitate cooperation between the independent auditor and the Team.

The Team should obtain and perform a brief review of the RFP and contract prior to company proposal solicitation. The objective of this review would be to determine if the documents generally meet the guidelines set out above. After tentative selection of a proposal by the company, the Team should obtain and briefly review that proposal for general conformance to the RFP requirements with an emphasis on the proposed work plan and audit techniques to be used.

A designated Team audit staff member should be assigned to be responsible for following the progress of the audit and to act as liaison between the Team, the auditor and the company. This individual should handle all correspondence between the Team and the auditor or company. The individual will also have the responsibility for monitoring whether deadlines will be met and whether objectives are being met. There may be, however, depending on the size of an audit, more than one auditor assigned to follow and monitor an audit.

Specific areas of Team involvement during the audit should be as follows:

- The company should notify the Team of the start of the audit. The assigned members of the Team audit staff should be in attendance at the kick-off meeting to gain an overall perspective on how the project is to be carried out in the field and the administrative procedures established to control it.
- The company or the independent auditor should forward any detailed or revised work plans to the Team audit staff for review and comments, if any.
- The company should forward all periodic progress reports prepared by the auditor to the audit staff for review and comments, if any.
- The company should forward draft report(s) and any company written comments to the Team audit staff for their review and comments. Also, changes to the draft should be supported by written comments from the companies.
- The Team audit staff assigned should obtain and review audit work papers as necessary to determine if they meet professional standards and provide adequate support for findings and conclusions reached by the auditor.
- The Team audit staff should have the option of attending and therefore receive notice of any meetings held between the auditor and the company where audit procedures or findings are discussed.

Upon completion of the audit, but prior to issuance of the independent auditor's opinion as to compliance with Section 272, the Team should verify that the program objectives were met. An additional benefit of utilizing the RFP process will be that the auditor is contractually obligated to fulfill all scope requirements, therefore, it will be more likely that the specified items will be completed. However, if all were not met, or if the Team determined that additional inquiry is necessary, the auditor should be required to meet the objectives and make the additional inquiry or be required to show why it cannot. The Team should be able to issue a Team comment, if the Team so desires, regarding the audit process.

The final non-proprietary report and company response, including plans to implement any recommendations, should be submitted to the Team for dissemination to the FCC and the appropriate State commissions. In addition, only the non-proprietary report should be made public to interested parties, with copies provided. Finally, the company should submit an implementation progress report to the Team audit staff approximately six months prior to the next audit. To help improve the effectiveness and efficiency of future audits, the Team should consider how the final report, the interested party comments and the implementation progress report impact the scope of the next audit.

III. AREAS OF GENERAL CLARIFICATION AND INTERPRETATION

| Point of Clarification | Interpretation/Recommendation |
|--|---|
| How should the audit fees be accounted for? | The expenses associated with the audits should be recorded on the books of the affiliates on which the audit is being performed. |
| What does the phrase "shall maintain books, records, and accounts in the manner prescribed by the Commission" mean as stated in Section 272(b)(2)? Should the FCC issue specific requirements for the recordkeeping of books and records by the affiliate? | In order to facilitate more timely and accurate analysis of company records and activities, the affiliated company should be required to follow the same system of accounts as the companies which are subject to Section 272 or be able to provide the independent auditor and the Team audit staff with a document which cross-references the accounts of the company with those of the affiliate. The records of both the company and the affiliate should be readily comparable to facilitate review. |
| How is the auditor to assure compliance with the separate accounting requirements in Section 272(b)? | <p>Operation requirements for the affiliate are stated in Section 272(b). In order to assure compliance, the auditor must plan and perform the audit to provide him or herself with a sufficient level of knowledge to determine:</p> <ul style="list-style-type: none"> ● whether the affiliate has maintained separate books, records, and accounts than those of the company; ● whether the affiliate has separate officers and directors, and that no employees are shared by the affiliate and the company; ● what sort of financing the affiliate has obtained and the type and ownership of the affiliates stock; and ● the nature and amounts for any transactions between the affiliate and the company. |
| Should Team members, Team audit staff members or other commission staff members be reimbursed for travel expense incurred in connection with the requirements of Section 272? | The companies should reimburse Team members, Team audit staff members and Federal and State commission staff members for reasonable travel expenses that are directly related to a Section 272 audits. |

| Point of Clarification | Interpretation/Recommendation |
|---|---|
| <p>How is the auditor to assure compliance with the other requirements of Section 272?</p> | <p>The auditor should:</p> <ul style="list-style-type: none"> • determine that all services, as required under this Section, are being provided by a separate affiliate, as required by Section 272(a)(2); • establish procedures to assure that discrimination with affiliates and nonaffiliates is not occurring, as required by Section 272(c)(1); • determine whether all transactions with an affiliate are accounted for in accordance with accounting principles designated or approved by the FCC, as required by Section 272(c)(2). The principles are those prescribed in the specific company's Cost Allocation Manual and in 47 CFR §32.27-Transactions With Affiliates; and • determine that the company and its affiliate are in compliance with Section 272,(e)(1),(2)&(3) and Section 272(g). |
| <p>What working papers will the Team have access to? Should it only have access to the current audit working papers or any previous audit working papers?</p> | <p>Section 272(d)(3)(B) gives the FCC and the State commissions "access to the working papers and supporting materials of any auditor who performs an audit under this section." Access should be given to all years working papers with no restriction or time limit placed upon access to prior years papers. The Team may need access to prior workpapers to review previous findings and areas of concern already addressed by the auditor, etc.</p> <p>State and Federal access to the workpapers should not be limited either. If a regulatory body determines that inspection of the documents is necessary, they should have full access to the workpapers. Even the workpapers of companies regulated under the price cap methodology should be accessible, as it is these jurisdictions that must continue to safeguard that non-competitive services are not subsidizing their competitive services.</p> |

| Point of Clarification | Interpretation/Recommendation |
|---|--|
| <p>How should the interested parties gain access to the auditor's workpapers?</p> | <p>Workpapers should remain in the custody of the company or its auditor with full access guaranteed and granted only to the State commissions, the FCC and the Team. If review of the workpapers is determined to be necessary, the interested body should send a representative to review the documents at the company's offices.</p> <p>When a need to review the papers has been identified, the lead auditor should send a request to the custodian of the papers requesting an on site visit. The auditor or company should have 7 days to respond to the request by either setting up a date for a visit to be held within 14 days from that point or by stating why a visit cannot begin in that time frame.</p> <p>Parties with access to the workpapers should be allowed to make necessary copies or notes of all non-proprietary information. All proprietary information should be held subject to review only; however, if a copy is requested, the copy should be placed in the custody of the requesting body, either a State commission, the FCC or the Team, and should be maintained under their guidelines for handling of proprietary information. Team auditors should abide by the rules set out by their Commission.</p> |
| <p>When should the "every two years" clock begin?</p> | <p>An audit should be performed and submitted for the first full fiscal year of operations after the new subsidiary begins provision of services (is incorporated or some other threshold) and every second year thereafter.</p> |

| Point of Clarification | Interpretation/Recommendation |
|--|---|
| How many audits are due every two years? One per subsidiary, one for all subsidiaries providing a particular type of service, or one for all subsidiaries for all types of services? | One audit should be performed and results submitted for each type of service. It is possible that not all audits for a particular company would be submitted in the same year. As discussed earlier, we believe that the clock begins when the first affiliate begins provision of a service listed in Section 272. Therefore, at maximum, there should be three audit reports submitted per company in a given year. One RFP may be used to solicit bids for all three audits. |
| Should the companies be segmented by regions, States or not at all for the purpose of completing an audit? | The companies should not be segmented. The audit requirement should be imposed at the parent company level, taking a top-down, comprehensive approach. |
| How far down the company organization chart should the scope of audits extend? Should audits be required of only direct subsidiaries or of any affiliate of the company or its subsidiaries? | The audit should encompass all affiliates, of the company or its subsidiary, that provide any of the three types of services. |
| Should audits be required of affiliates that resell the specified services? | Audits should be required of all affiliates whose activities, in any way, involve or whose revenues are derived from the services specified in Section 272. |
| To whom should the completed audits be submitted? | Section 272(d)(2) states that the auditor "shall submit the results of the audit to the Commission (FCC) and to the State commission of each State in which the company audited provides service, which shall make such results available for public inspection." We believe that all audit reports should be submitted to the Team directly for dissemination to the appropriate State commissions, the FCC or interested parties. |

| Point of Clarification | Interpretation/Recommendation |
|---|--|
| <p>What should be the due date of the completed audits? How should requests for extensions be handled?</p> | <p>The FCC should prescribe that the audit reports should be due, no later than 90 days following the close of the fiscal year for each company. Such a due date is reasonable if a significant portion of the audit field work is performed during the period being audited.</p> <p>The FCC should also prescribe that requests for extensions be directed to the Commission, and should be received no later than 14 days prior to the due date of the audit. The FCC should forward courtesy copies of the request to the appropriate State commissions. FCC approval or denial of a company's request should be given within 14 days.</p> <p>Absent FCC interpretation, these provisions should be included in each RFP.</p> |
| <p>How should comments to the final audit report be handled? Should a comment period be established for the report? Who should receive copies of the comments?</p> | <p>All comments should be submitted to the Team for review and dissemination to the appropriate State commission and the FCC. A 30 day comment filing period is appropriate for the commissions and other parties.</p> |
| <p>How should issues of non-compliance identified during the audit or by a commentor be handled? Should the Team have authority or responsibility to initiate activity or to coordinate action?</p> | <p>The Team should have the responsibility of notifying the FCC or appropriate State commission of any findings. This can be accomplished through simply providing a copy of the report to the appropriate commission. Any action that may be necessary should be taken by the FCC or a State commission.</p> |
| <p>Should companies have an opportunity to respond to comments by parties to the audit findings? If so, how long?</p> | <p>Yes. Companies should have an opportunity to make reply comments. Company comments should be due 30 days after the due date of the parties' comments.</p> |

| Point of Clarification | Interpretation/Recommendation |
|--|---|
| How should proprietary information be handled? | <p>Each State commission and the FCC should be required to comply with its own rules regarding the handling of proprietary information if it wishes to review such data. In addition, each Team and Team audit staff member should be required to comply with the rules of their State commission when reviewing proprietary data. Therefore, each State commission who wishes to have representation on the Team or the Team audit staff should be in compliance with the statutory requirements shown in Section 272(d)(3)(C) that says "the State commission shall implement appropriate procedures to ensure the protection of any proprietary information submitted under this section."</p> <p>Such a requirement of Team or Team audit staff membership should be in place so as to increase the effectiveness of the Team's oversight. If there were certain Team or audit staff members who's State did not have adequate safeguards in place to ensure the protection of proprietary information, that member would not have access to any proprietary information provided during the audit. Therefore, that member could not contribute to the complete performance of the Team's duties.</p> |
| What time frame should an audit cover? Should it cover the two years of operations since the last audit or just one fiscal year? | Section 272(d)(1), states that a company shall obtain an audit "every 2 years." We believe that each audit should be comprehensive and that the opinion issued should include assessment of activities occurring since the last audit. |

IV. AREAS REQUIRING FCC ACTION

| Concern | Recommendation |
|--|---|
| Will the FCC seek to extend the sunset period beyond the 3- and 4-years specified in Section 272(f)(1)&(2)? | <p>The FCC should seek to extend the period for a particular service if:</p> <ul style="list-style-type: none">• the 3- or 4-year period has passed and no audit has been completed for that particular type of service; or• an audit has been completed, for that service, within the last 2 years and there were issues of non-compliance that were identified as a result of the audit; or• there has not been an audit completed, for that type of service, within the last 2 years; or• there does not appear to be effective competition for the specific service in the affiliates territory. |
| What will the procedure be on the Federal level, if areas of non-compliance are identified as a result of the audit? | Companies should submit a copy of any plans they have to implement any auditor recommendations or to correct any items the |